

LEXSTAT 38 N.J.R. 1521(A)

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RULE PROPOSALS

LABOR AND WORKFORCE DEVELOPMENT DIVISION OF WORKERS' COMPENSATION

38 N.J.R. 1521(a)

Proposed Readoption with Amendments: N.J.A.C. 12:235

Rules of the Division of Workers' Compensation

Authorized By: David J. Socolow, Commissioner, Department of Labor and Workforce Development.

Authority: *N.J.S.A. 34:1-20; 34:1A-3(e); 34:1A-12(b)* and (c); and 34:15-64.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2006-115.

A **public hearing** on the proposed readoption with amendments will be held on the following date at the following location:

Monday, April 24, 2006
10:00 A.M. to 12:00 Noon
N.J. Department of Labor and Workforce Development
John Fitch Plaza
13th Floor, Auditorium
Trenton, New Jersey

Please call the Office of Legal and Regulatory Services at (609) 292-2789 if you wish to be included on the list of speakers.

Submit written comments by June 2, 2006 to:

David Fish, Regulatory Officer
Office of Legal and Regulatory Services
N.J. Department of Labor and Workforce Development
PO Box 110 - 13th Floor
Trenton, New Jersey 08625-0110
Fax to: (609) 292-8246

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The agency proposal follows:

Summary

Pursuant to *N.J.S.A. 52:14B-5.1c, N.J.A.C. 12:235*, Rules of the Division of Workers' Compensation, is scheduled to expire on September 5, 2006. The Department has reviewed these rules and, with the exception of a technical amendment to correct a typographical error and two additional technical amendments made at *N.J.A.C. 12:235-2.1*, which reflect a change in the name of the Department from the "Department of Labor" to the "Department of Labor and Workforce Development," has determined them to be necessary, reasonable and proper for the purposes for which they were originally promulgated. Accordingly, the Department proposes that *N.J.A.C. 12:235* be readopted with amendments.

A summary of the subchapters of *N.J.A.C. 12:235* follows:

N.J.A.C. 12:235-1 sets forth the purpose and scope of the chapter. It also addresses the construction of the chapter, certifications in lieu of oath, still and television camera and audio coverage of proceedings and the maximum workers' compensation benefit rates.

N.J.A.C. 12:235-2 defines the words and terms used throughout the chapter.

N.J.A.C. 12:235-3 concerns formal claims.

N.J.A.C. 12:235-4 addresses the informal hearing process, which is provided by the Division in order to effectuate the amicable adjustment of controversies between injured or disabled workers and their employers.

N.J.A.C. 12:235-5 sets forth the procedures to be followed when filing a claim for benefits payable from the Second Injury Fund, pursuant to *N.J.S.A. 34:15-95* et seq.

N.J.A.C. 12:235-6 concerns the commutation of an award and sets forth what must be contained in an application form for commutation and the procedure for approval or disapproval of the application.

N.J.A.C. 12:235-7 sets forth the procedures to be followed when filing a claim for benefits payable from the Uninsured Employers' Fund (UEF), pursuant to *N.J.S.A. 34:15-120.1* et seq.

N.J.A.C. 12:235-8 sets forth the procedures to be followed when filing a discrimination complaint.

N.J.A.C. 12:235-9 concerns the assignment and supervision of Judges of Compensation.

N.J.A.C. 12:235-10 addresses the conduct of Judges of Compensation.

N.J.A.C. 12:235-11 addresses accident reports; specifically, the employers' first and second report of accidental injury or occupational disease, the insurers' initial notice of accident, insurers' final report of accident and report of death.

N.J.A.C. 12:235-12 concerns surcharge collection procedures.

N.J.A.C. 12:235-13 sets forth the procedures for imposition of statutory penalties for failure to provide proof of compensation insurance.

N.J.A.C. 12:235-14 identifies forms used by the Division.

As the Department has provided a 60-day comment period for this notice of proposal, this notice is excepted from the rulemaking calendar requirements, pursuant to *N.J.A.C. 1:30-3.3(a)5*.

Social Impact

The rules proposed for readoption and the proposed amendments would have a positive impact on both employers and employees, as the rules provide for a court and administrative system which resolves workers' compensation disputes and other related issues. The rules establish a system by which benefits are paid to employees during a time of need, and place responsibility on the employer to provide such benefits. The Department would benefit as a result of the readoption of these rules, with amendments, as it would be assured of having a workers' compensation system that is capable of efficiently determining benefit liability, which, in turn, would benefit the working people of the State.

Economic Impact

The rules proposed for readoption and the proposed amendments would ensure the continued orderly functioning of the Division of Workers' Compensation. The operation of the workers' compensation court continues to be without filing fees or other prejudgment charges to the injured workers filing claims with the court. All costs of the Division continue to be funded through Second Injury Fund assessments. Claimants stand to benefit economically from the rules proposed for readoption, with amendments, by virtue of the continued operation of a system designed to compensate employees when personal injury is caused by an accident arising out of and in the course of their employment.

Federal Standards Statement

The rules proposed for readoption and the proposed amendments are governed by *N.J.S.A. 34:15-1* et seq., and are not subject to any Federal standards or requirements. Therefore, a Federal standards analysis is not required.

Jobs Impact

The rules proposed for readoption and the proposed amendments would not result in the generation or loss of jobs in the State.

Agriculture Industry Impact

The rules proposed for readoption and the proposed amendments would not have an impact on the agriculture industry of the State.

Regulatory Flexibility Analysis

The proposed amendments would not impose any reporting, recordkeeping or compliance requirements on small businesses as that term is defined in the Regulatory Flexibility Act, *N.J.S.A. 52:14B-16* et seq. The rules proposed for readoption would impose reporting, recordkeeping and compliance requirements on parties involved in workers' compensation disputes and disputes concerning related issues. Some of those parties can be considered small businesses pursuant to the Regulatory Flexibility Act, *N.J.S.A. 52:14B-16* et seq. Such small businesses must comply with the workers' compensation coverage requirements and must file or answer claim petitions, motions for medical and/or temporary benefits, Second Injury Fund applications and Uninsured Employers' Fund certifications. The filing of these papers is a necessary component of the workers' compensation process. It is necessary for all parties to these matters, regardless of size, to file the required forms and pleadings in an effort to ensure the orderly, efficient functioning of the workers' compensation system. Moreover, any administrative costs associated with the filing of accident reports (see *N.J.A.C. 12:235-11*), will be borne by the employer, whether small or large. The Department does not anticipate the need for any outside professional assistance or consultants in order to comply with the rules proposed for readoption or the proposed amendments.

Smart Growth Impact

The rules proposed for readoption and the proposed amendments would not have an impact on the achievement of smart growth and the implementation of the State Development and Redevelopment Plan.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at *N.J.A.C. 12:235*.

Full text of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

12:235-2.1 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

...

"Commissioner" means the Commissioner of Labor **and Workforce Development** or his or her designee.

"Department" means the New Jersey Department of Labor **and Workforce Development**.

...

12:235-7.9 Certification to the UEF, medical information in asbestos exposure cases

(a) In addition to the items specified at *N.J.A.C. 12:235-[7.4]* 7.3 for certification to the UEF, the petitioner shall, in asbestos exposure claims under *N.J.A.C. 12:235-7.8* provide the following as part of such certification:

1.-12. (No change.)

(b) (No change.)

(c) In addition to the information required under the provisions of this rule in (a) above and under *N.J.A.C. 12:235-[7.4]* 7.3, the petitioner shall provide the UEF with all medical records and information related to the asbestos exposure claim.